

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	Administrative Cause
)	Number: 14-001A
READOPTION OF 312 IAC 2:)	
PROCEDURES AND DELEGATIONS)	
)	(LSA Document #14-27(F))

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the readoption of 312 IAC 2, which provides the procedures by which the Natural Resources Commission (the “Commission”) and related boards, conducts meetings. The article also delegates routine functions or those requiring prompt action to professionals in the Commission or DNR. The article assists with transparency for Commission operations, as well as complying with the “Open Door Law”. 312 IAC 2 can be accessed through the Indiana General Assembly’s website at:
www.in.gov/legislative/iac/T03120/A00020.PDF.

312 IAC 2 is proposed to be readopted in its entirety and without amendment. Under 312 IAC 2-2-4(b), where the rules are being readopted in their current form without amendments, the Director of the Division of Hearings may approve preliminary action. The Commission retained authority to take final action on readoptions.

The Director of the Division of Hearings approved preliminary action on January 13, 2014. The standard practice is to readopt rules by article, and 312 IAC 2 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5

Jennifer Kane, with the Commission’s Division of Hearings, was appointed Small Business Regulatory Coordinator for the rule readoption. She provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 2:

Review under IC 4-22-2.5-3.1

The continued need for the rule.

312 IAC 2-1 governs the conduct of meetings of the Natural Resources Commission (the “Commission”) and other boards.

312 IAC 2-2 governs Commission delegations of authority, and these may be supplemented in another article of this title.

312 IAC 2-3 addresses public hearings prior to the issuance of an agency order (that is subject to administrative review under IC 4-21.5 and 312 IAC 3-1).

312 IAC 2-4 governs organized activities and tournaments on designated public waters.

312 IAC 2-5 provides standards for review of determinations for testing and programs for continuing education.

These rules are necessary to report procedures by which the Commission (and any other board) conducts its meetings. They assist with transparency for Commission operations and assist in complying with the “Open Door Law.” The rules support efficient operations by delegating Commission authority for routine and emergency matters, a need that is underscored because the Commission typically meets only semi-annually. There is a continued need for these rules.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

The Commission has not received complaints from the public, including small businesses, concerning these rules or the Commission’s implementation of these rules.

The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

(B) small businesses in complying with the rule.

These rules assist with the Commission’s conduct of business, licensure by the Department of Natural Resources (the “Department”), and by identifying procedures by which the individuals may petition for a public hearing. They are generally designed to illustrate how the public can communicate with and obtain relief from the Commission or its delegates, rather than imposing mandates.

The rules help the Commission and the Department refine its rules and work with small businesses, private individuals, and professionals seeking to comply with statutes and rules. 312 IAC 2-1, 312 IAC 2-2, 312 IAC 2-3, 312 IAC 2-4, and 312 IAC 2-5 do not conflict with other federal, state or local laws and constitute an appropriate implementation of state statute. These rules are procedural and help clarify the statutory structure.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

There has been no demonstration that these rules significantly overlap with or duplicate other federal, state or local laws.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

In 2008, 312 IAC 2 was readopted under LSA Document #08-52(F). Since 2008, there have been three amendments to this article.

(1) Under LSA Document #09-986(F), 312 IAC 2-4-7, 312 IAC 2-4-9, 312 IAC 2-4-9.5, and 312 IAC 2-4-12 were amended, and 312 IAC 2-4-7.5 was added. Amendments were made to sections governing organized activities and tournaments on designated public waters.

(2) LSA Document #11-442(F) amended 312 IAC 2-4-12, and amended other rules codified at sections of 312 IAC 8-2. The amendments to 312 IAC 2-4-12 removed J. Edward Roush Lake (formerly known as "Huntington Reservoir") from the listing of lakes that are subject to standards governing fishing tournaments.

(3) Under LSA Document #12-273(F), 312 IAC 2-5 was added to provide standards for informal review within the DNR, and to acknowledge the opportunity for administrative review to the Commission under IC 4-21.5, of unsuccessful test results and accreditation of continuing education programs. These rules apply if a law requires successful testing or compliance with continuing education requirements for an individual to conduct a vocation or avocation, and the law makes the Department responsible for testing or continuing education.

The amendments under LSA Document #09-986(F), LSA Document #11-442(F), and LSA Document #12-273(F) did not impose requirements or costs on small businesses.

In the process of conducting business, the Commission is continually reviewing its effectiveness in providing standards and guidance to small businesses, private individuals, and professionals in complying with its rules. Technology, economic conditions, and other factors have not changed in a way that would warrant modification to 312 IAC 2-1, 312 IAC 2-2, or 312 IAC 2-3.

Review under IC 4-22-2.1-5

The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared

Proposed is the readoption of 312 IAC 2 in its entirety and without amendment. These rules provide the procedures in which the Natural Resources Commission (the "Commission"), and any other related board, conducts its meetings. The rules assist with the transparency of the Commission operations, as well as complying with the "Open Door Law".

Since the 2008 readoption of these rules (LSA Document #08-52(F)), there have been three amendments under LSA Document #09-986(F), LSA Document #11-442(F), and LSA Document #12-273(F).

Following are the previous economic impact statements prepared for the above referenced rule packages amending 312 IAC 2:

LSA Document #09-986(F)

Amendments were made to the sections governing organized activities and tournaments on designated public waters. Following Commission consideration of comments received during the rule process, however, amendments proposed to 312 IAC 2-4-12(g) were rejected that would have increased the required cash or security bond from \$150 to \$300. The existing \$150 bond was retained, so the following analysis of the proposed fiscal analyses for this proposed amendment no longer applies:

The requirement for an increase in the bond from \$150 to \$300 under 312 IAC 2-4-12(g) is to cover any potential costs associated with license noncompliance. The current bond of \$150 is not sufficient in all instances to cover the damage costs or revenue loss for forfeited tournaments. If conditions of the license are met, the bond is returned to the applicant in full. Other than this modification with its conditional impact, there is no impact to small business.

LSA Document #11-442(F)

Amendments removed J. Edward Roush Lake (formerly known as “Huntington Reservoir”) from the listing of lakes that are subject to standards governing fishing tournaments. This amendment resulted in a modest regulatory reduction. Amendments were also made by LSA Document #11-442(F) to 312 IAC 8-2, and these are set forth for completeness of the record, but they are not germane to this readoption.

**Economic Impact Statement
LSA Document #11-442**

IC 4-22-2.1-5 Statement Concerning Rules Affecting “Small Businesses”

Estimated Number of Small Businesses Subject to This Rule:

None. The proposed changes only affect individual hunters and those who wish to have a fishing tournament, collect reptiles or amphibians, or use a motor-driven airborne device or airborne human transportation device on a DNR property.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur For Compliance:

None.

Estimated Total Annual Economic Impact on Small Businesses To Comply:

Not applicable.

Justification Statement of Requirement or Cost:

Not applicable.

Regulatory Flexibility Analysis of Alternative Methods:

Not applicable.

LSA Document #12-273(F)

312 IAC 2-5 was added to provide standards for informal review within the DNR, and to acknowledge the opportunity for administrative review to the Commission under IC 4-21.5, of unsuccessful test results and accreditation of continuing education programs. These apply if a law requires successful testing or compliance with continuing education requirements, for an individual to conduct a vocation or avocation, and the law makes the Department responsible for testing or continuing education. This rule clarifies the existence of opportunities for agency review by a person aggrieved by Department testing or accreditation decisions but does not impose new requirements. The rule provides transparency and consistency but was not expected to result in substantial activity, and it has not.

**Economic Impact Statement
LSA Document #12-273**

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

312 IAC 2-5 would apply if another law requires successful completion of testing and identifies [the Department] as the testing authority. The rule would provide a consistent process for individuals with failing test scores to seek an informal consultation with a Division Director or a designate, and the rule would acknowledge an opportunity for administrative review under IC 4-21.5. The rule does not establish testing requirements.

Consistency is provided to a person that wishes to pursue [Department] accreditation for a continuing education program. Most continuing education programs are sponsored by a state agency (probably the [Department]) or a not-for-profit organization. In a half-dozen instances, the sponsor may be a small business. The proposed rule would identify a process by which a person could seek a [Department] imprimatur for a program in which participants would receive continuing education credit. The rule seeks to accommodate the process, particularly for continuing education programs that provide innovative or specialized instruction and that are likely to enhance the interests protected by the governing law.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

There is no annual reporting, record keeping, or administrative costs associated with the proposed rule.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

None. No small business is required to obtain [Department] approval to conduct a program.

Completion of continuing education is a legal requirement elsewhere imposed on individuals who wish to engage in a particular vocation or avocation.

Justification Statement of Requirement or Cost:

Not applicable.

Regulatory Flexibility Analysis of Alternative Methods:

[Department] could restrict programs which qualify for continuing education to those that are sponsored by the [Department] or another state agency. This alternative was disapproved because not-for-profit organizations or small business may sometimes be better positioned to offer continuing education, particularly for specialized instruction.

Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)

The analysis of the alternative method provided in the Economic Impact Statement associated with LSA Document #12-273, regarding continuing education under 312 IAC 2-5, continues to be accurate. Restricting continuing education to Department programs is not a viable option. A not-for-profit organization or small business may sometimes be better positioned to offer continuing education.

Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements

Today's conditions have not changed since the above referenced Economic Impact Analyses were prepared. 312 IAC 2 should be readopted in its entirety without change. There is no alternative regulatory method that can be seen to exist that could minimize the economic impact of the rule on small businesses while still achieving the purpose of the rule. 312 IAC 2 is designed to accommodate access to the agency and to provide pathways to address grievances rather than to impose regulatory requirements. 312 IAC 2 provides clarity on NRC procedure and promotes agency transparency.

Executive Order 13-03 required agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013.” These requirements were restated, along with additional compliance information, in Financial Management Circular 2013-01. On May 2, 2013 Christopher D. Atkins, Director, Office of Management and Budget, wrote to all agency heads stating the moratorium set forth in Executive Order 13-03 was not applicable to readoptions and that an exception did not need to be sought or received.

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule readoption proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent to Readopt a Rule, to the Office of Management and Budget and the Administrative Rule Oversight Committee

on February 14, 2014. In a letter dated March 20, 2014, Brian E. Bailey, Director, State Budget Agency, recommended the proposed rule readoption be approved.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On February 5, 2014, the “Notice of Intent to Readopt” 312 IAC 2 was posted to the *Indiana Register* at 20140205-IR-312140027RNA as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 2 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

No written request was received. The Commission may either submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The hearing officer recommends the Commission approve for readoption 312 IAC 2, without amendment, for subsequent filing with the Publisher.

Dated: April 7, 2014

Jennifer M. Kane
Hearing Officer